

IN THE MATTER OF : BEFORE THE
GERALD & BETTY MAIZLISH : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioners : HEARING EXAMINER
 : BA Case No. 05-007S

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DECISION AND ORDER

On March 13, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Gerald and Betty Maizlish, Petitioners, for variances to (1) erect a 25-foot tall, 218.15-square foot freestanding commercial identification sign one foot from the Route 40 right-of-way; (2) erect a 5.75-foot tall, 36.69 square foot freestanding commercial identification sign one foot from the Route 40 right-of-way; and (3) erect a 4-foot tall, 8 square foot freestanding directional sign one foot from the Route 40 right-of-way in a B-2 (Business-General) Zoning District, filed pursuant to Section 3.513 of Subtitle 5 of Title 3 of the Howard County Code (the "Sign Code").

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Marvin I. Singer, Esquire, represented the Petitioners. David Cook and Kenneth Padgett testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioners are the owners of the subject property, which has an address of 8569 Baltimore National Pike and is located in the 2nd Election District on the south side of Baltimore National Pike (U.S. Route 40) in Ellicott City (the “Property”). The Property is referenced on Tax Map 25, Block 1 as Parcel 199.

2. The Property is trapezoidal in shape and consists of about 1.87 acres. The Property has about 104 feet of frontage on Baltimore National Pike and is about 580 feet deep.

The Property is improved with a Nissan motor vehicle sales and service facility. The facility consists of a one-story 14,631 square foot building located 69 feet from the Route 40 frontage with associated parking surrounding the building. The Property is accessed via a 30’ wide driveway entrance located 15 feet from the northeast corner of the site. The rear of the site is wooded.

3. Vicinal properties include:

(a) To the east is a B-2 zoned, 6.3-acre parcel containing an Acura car dealership.

(b) To the south is an R-20 zoned property improved with a one-story building containing a bookstore.

(c) To the west is a B-2 zoned parcel improved with a two-story office building.

(d) To the north across Route 40 is a B-2 zoned property used as a parking lot for the storage of automobiles.

4. The Petitioner proposes to replace two existing freestanding commercial signs on the Property and erect a third new directional sign. The first sign, referred in the petition as Sign A, is currently located on the west side of the driveway entrance and one foot from the Route 40 right-of-way. The existing sign is 25 feet tall and 58.17 square feet in area and was approved for a variance in BA Case No. 94-01S. The replacement sign will be a freestanding brand identification sign 25 feet tall and 9 feet 9 inches wide. The sign will be double-sided and will identify the facility as a “Nissan” dealership. The sign will be erected on two pylons 9 feet 9 inches apart and two feet deep. The top portion of the sign containing the “Nissan” logo will be 75 square feet in area. The Petitioners propose to erect the sign one foot from the Route 40 right-of-way rather than the 50’ setback required in relation to sign height and 218.15 feet required in relation to aggregate sign area.

The second sign, identified in the petition as Sign B, is currently located on the east side of the driveway entrance and one foot from the Route 40 right-of-way. The existing sign is 18 feet tall and 30.18 square feet in area and was likewise approved for a variance in BA Case No. 94-01S. The replacement sign will be a freestanding monument-style commercial sign 5 feet 9 inches tall and 7 feet 3 inches wide. The sign will contain the wording “Nissan Pre-owned Vehicles.” The Petitioners propose to erect the sign one foot from the Route 40 right-of-way rather than the 11.5’ setback required in relation to sign height and 36.69 feet required in relation to aggregate sign area.

The third sign, identified in the petition as Sign C, is a new freestanding directional sign to be located adjacent to Sign “A” on the west side of the driveway entrance. The sign will be a double-sided and stand 4 feet tall on two posts. The area of the sign portion will be 2 feet high and 4 feet wide and contain the words “Sales” and “Service.” The Petitioners

propose to erect the sign one foot from the Route 40 right-of-way rather than the 8' setback required in relation to both sign height and aggregate sign area.

5. Baltimore National Pike is a divided, non-local highway with a posted speed limit of 45 mph in the area of the Property. The site sits in the valley of two hills along Baltimore National Pike. To the west of the Property are numerous power lines, utility poles, street signs, and deciduous and conifer trees that block the view of motorists traveling east. In addition, a large commercial sign is located close to the road frontage on the immediately adjoining property to the west which impedes the view of eastbound motorists. Likewise, to the east of the Property are street signs, deciduous and conifer trees, and a large Acura dealership sign that block the view of motorists traveling west.

6. Mr. Cook, a principal in the Nissan dealership, testified that 50 % of the business's customers come from outside the Ellicott City area. He noted that other car dealerships along Route 40 have large signs 25 feet tall or higher that are close to the road. Traffic on Route 40 tends to travel at speeds up to 60 mph or more. In response to DILP's recommendation that Sign "B" be reduced in size to a monument sign, Mr. Cook stated that westbound traffic could not see a low monument sign because the view would be blocked by eastbound traffic and traffic signs in the median. He introduced photographs which demonstrate the views from both eastbound and westbound traffic (Exhibits 1A through 1U). Mr. Cook stated that, although the pylons for Sign "A" are ordinarily illuminated, the Petitioners are willing to construct the sign so that the legs cannot be lit.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Fact, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The location of the Property on Baltimore National Pike, which is a divided highway that has a dependency on nonlocal use, necessitates taller and larger signs visible to fast-moving vehicles from both sides of the roadway. Consequently, its location on a nonlocal highway is a condition leading to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

The excessive grade of Baltimore National Pike on either side of the Property, as exacerbated by the power lines, utility poles, traffic signs, vegetation and adjacent signage, would make it difficult for eastbound motorists to view any of the three signs if they smaller, lower, or set back the required distance from Route 40. Likewise, these conditions would make it difficult for westbound motorists to view conforming signs; in addition, the eastbound traffic and road signs in the median impair the view of westbound motorists. These conditions therefore represent obstructions that seriously interfere with the visibility of

the proposed sign resulting in practical difficulties and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural or aesthetic characteristics which shall be considered.

There are no historical, architectural or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

The signs will be well separated from vicinal properties. The closest vicinal properties are also commercial in nature. Two of the signs currently exist under previous variances and one will be reduced in size. Consequently, the variances, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition as required by Section 3.513(b)(4).

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

In order to be readily identified by both eastbound or westbound motorists traveling at the posted speed limit in sufficient time to make safe turning movements, the signs must be erected at their proposed locations. The requested variances are therefore the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of the unique grade and vicinal obstructions on Baltimore National Pike. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this **12th day of April 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Gerald and Betty Maizlish for variances to (1) erect a 25-foot tall, 218.15-square foot freestanding commercial identification sign one foot from the Route 40 right-of-way; (2) erect a 5.75-foot tall, 36.69 square foot freestanding commercial identification sign one foot from the Route 40 right-of-way; and (3) erect a 4-foot tall, 8 square foot freestanding directional sign one foot from the Route 40 right-of-way in a B-2 (Business-General) Zoning District is hereby **GRANTED;**

Provided, however, that the variances will apply only to the uses and structures as described in the petition and plan submitted, as amended, and not to any other activities, uses, structures, or additions on the Property, and **subject to the following condition:**

1. The pylons for Sign “A” may not be illuminated.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.